

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

BILLY SHAFFER,

Plaintiff,

v.

**CIVIL ACTION NO.: 2:13-cv-12450
Honorable**

**CITY OF SOUTH CHARLESTON, a
West Virginia municipal corporation,
PAT C. RADER, employee of the city
of South Charleston, ROBERT
YEAGER, employee of the City of
South Charleston, DOW CHEMICAL
CORPORATION, a Foreign
Corporation authorized to do business
in West Virginia, MARY BYRD, a Dow
Chemical Employee, JIM JONES, II, a
Dow Chemical Employee, JEFF
MEANS, a Dow Chemical Employee,
CLIFF SAMPLES, a Dow Chemical
Employee, and Kanawha County
Prosecuting Attorney, JENNIFER
MEADOWS**

Defendants.

NOTICE OF REMOVAL

COME NOW Defendants, City of South Charleston, Pat C. Rader, and Robert Yeager, Dow Chemical Corporation, Mary Byrd, Jim Jones, II, Jeff Means, Cliff Samples, and Jennifer Meadows, by their respective counsel, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and file their Notice of Removal, providing notice of removal of this action from the Circuit Court of Kanawha County, West Virginia, Civil Action No. 11-C-1368, to the United States District Court for the Southern District of West Virginia, at Charleston. In support thereof, Defendants state as follows:

1. Plaintiff, Billy Shaffer, initiated this lawsuit by filing his Complaint on or about August 16, 2011, in the Circuit Court of Kanawha County, West Virginia, against Defendants, City of South Charleston, Corporal Pat C. Rader, and Lieutenant Robert Yeager, alleging causes of action for conversion, trespass, and tort of outrage, arising from a search of his residence on August 17, 2009, and corresponding seizure of items that Plaintiff allegedly stole from Dow Chemical Company (“Dow”). Please see Docket Sheet, attached hereto as ***Exhibit 1***.

2. On March 26, 2013, the Circuit Court granted Plaintiff’s Motion for Leave to Amend the Complaint, filed on February 6, 2013.

3. In addition to naming additional Defendants Plaintiff’s Amended Complaint adds a civil rights cause of action, alleging that Defendants deprived him of substantive and procedure of due process, equal protection, and other constitutional rights. Please see Amended Complaint, attached hereto as ***Exhibit 2***. Accordingly, Plaintiff’s civil rights claim, brought pursuant to 42 U.S.C. § 1983, makes this case removable, pursuant to this Court’s federal question jurisdiction under 28 U.S.C. § 1331.

4. Plaintiff served the Amended Complaint on Dow on May 6, 2013; Mary Byrd, Cliff Samples, and Jim Jones, II, on May 8, 2013; Jeff Means on May 9, 2013; and Jennifer Meadows on May 15, 2013.

5. Although Plaintiff filed his Amended Complaint on April 4, 2013, Defendants, City of South Charleston, Pat C. Rader, and Robert Yeager, were unaware of the filing and did not receive a copy of the Amended Complaint until Dow’s counsel provided a copy on May 14, 2013. On May 15, 2013, Plaintiff’s counsel faxed a copy of the Amended Complaint to undersigned. Please see correspondence, attached hereto as ***Exhibit 3***. However, as of the date of this Notice of Removal, Plaintiff has yet to properly serve Defendants, City of South Charleston, Pat C. Rader, and Robert Yeager.

6. In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendants are attached hereto as ***Exhibit 4***.

7. This Court has federal question jurisdiction over this matter as it has “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. In his Amended Complaint, Plaintiff alleges that “Defendants, either individually or collectively, acted under the color of state law to deprive the Plaintiff of substantive and procedural due process, equal protection and other civil rights pursuant to 42 USC 1983 *et seq.*” Accordingly, Plaintiff’s civil rights claim, brought pursuant to 42 U.S.C. § 1983, makes this case removable, pursuant to this Court’s federal question jurisdiction under 28 U.S.C. § 1331.

8. By claiming that Defendants violated his “substantive and procedural due process, equal protection and other civil rights,” it is clear that Plaintiff is asserting a claim under the Constitution of the United States. “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441. Accordingly, a federal question exists which is appropriate for this Court to adjudicate.

9. Based upon 28 U.S.C. §§ 1331 and 1441(a), Plaintiff asserts claims invoking the protections afforded under the Constitution of the United States, which give rise to the original jurisdiction of this Court thereby permitting removal of Plaintiff’s Civil Action to the United States District Court for the Southern District of West Virginia.

10. Defendants have filed this Notice of Removal within thirty (30) days after their respectively accepting service of the Summons and Amended Complaint filed by Plaintiff, which raises claims

removable to the United States District Court for the Southern District of West Virginia.

11. Pursuant to 28 U.S.C. § 1391, venue is proper in the Southern District of West Virginia because a substantial part of the events giving rise to the claims contained in Plaintiff's Amended Complaint are alleged to have occurred in this district.

12. Defendants will promptly file a true and correct copy of this Notice of Removal with the Circuit Clerk of Kanawha County, West Virginia, and written notice thereof given to counsel for Plaintiff in accordance with 28 U.S.C. § 1446(d). The Notice of Filing of Notice of Removal is attached hereto as *Exhibit 5*.

13. The removal of the above-captioned civil action from the Circuit Court of Kanawha County, West Virginia, Civil Action No. 11C-1368, to the United States District Court of the Southern District of West Virginia is proper.

WHEREFORE, Defendants, Defendants, City of South Charleston, Pat C. Rader, and Robert Yeager, Dow Chemical Corporation, Mary Byrd, Jim Jones, II, Jeff Means, Cliff Samples, and Jennifer Meadows, hereby remove Civil Action No. 11-C-1368 from the Circuit Court of Kanawha County, West Virginia, to this Honorable Court.

Dated: May 28, 2013.

PREPARED AND SUBMITTED BY:

/s/ Molly Underwood Poe

Molly Underwood Poe, Esq. (WV State Bar No. 6172)

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Counsel for Defendants, City of South Charleston, Pat C. Rader, and Robert Yeager

INSPECTED AND AGREED TO BY:

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Counsel for Defendants Kanawha County Prosecuting Attorney Jennifer Meadows

**UNITED STATES DISTRICT COURT
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Plaintiff,

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MEANS, a Dow Chemical Employee,
CLIFF SAMPLES, a Dow Chemical
Employee, and Kanawha County
Prosecuting Attorney, JENNIFER
MEADOWS**

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendants, does hereby certify on this **28th** day of **May, 2013**, that a true copy of the foregoing “***Notice of Removal***” was filed with the Court using the CM/ECF which will send notification of such filing to the following CM/ECF participants:

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/s/ Molly Underwood Poe

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